

7

3

U/100

IN THE HIGH COURT OF CHHATTISGARH AT
BILASPUR

Single Bench

Second Appeal No. 311 /2006

APPELLANT

Plaintiff

P.A. No. 1909/186
Presented by Shri B.D. Badgami
dated 25/7/06

✓ Ramratan, S/o Buddhu
aged about 52, Caste Tali
Occupation Service
R/o Village Kalayanpur
Tah. Surajpur, Distt. Sarguja

RESPONDENTS

Defendant

VERSUS

- ✓ 1. Ram Lakhan, S/o Buddhu
aged about 57 years
- ✓ 2. Rajendra Prasad S/o Buddhu
aged about 47 years
- ✓ 3. Chaitram, S/o Buddhu
aged about 45 years
All R/o R/o Village Kalayanpur
Tah. Surajpur, Distt. Sarguja
- ✓ 4. State of Chhattisgarh (formal)
Through - The Collector
Distt. Sarguja (C.G.)

RECEIVED-COPY
CLEANED BY ANAND BILASPUR
5/7/06

SECOND APPEAL U/S 100 OF C.P.C.

मामला क्रमांक ...S.A.:311..... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>25.09.2006</u> Shri D.R. Sharma, learned Sr. Advocate with Ms. Anita Singh, counsel for the appellant/plaintiff. Heard on admission. 2. This second appeal u/s 100 of the Code of Civil Procedure is directed against the impugned judgment and decree dated 6.5.2006 passed in Civil Appeal No. 55-A/05 by Second Additional District Judge (FTC), Surjapur, Distt-Sarguja (C.G.) whereby the appeal preferred by the appellant/plaintiff against the judgment and decree dated 31.12.2004 passed by Civil Judge, Class-II, Surajpur in Civil Suit No. 29-A/97 dismissing the suit of the plaintiff, has been affirmed. 3. Learned counsel for the appellant submits that partition of the land in question was effected thrice. First, during lifetime of Budhu, father of the parties, in the year 1971 and secondly, on 24.7.1987 after the death of Budhu when it was again divided into four equal shares and lastly in the year 1996 by the Settlement Officer. It is argued that the partition effected by the Settlement Officer was done behind the back of the appellant/plaintiff on the basis of his forged signature and therefore, both the Courts below have wrongly held that the partition has been proved and	

मामला क्रमांक S.A. 311..... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	thus, following substantial questions of law arise for adjudication of this second appeal; 1. "Whether partition can be made without presence of share holder of the property?" 2. "When, concern to a property, previously partition was made, whether again order may be passed for new partition in respect of same property and same share holder?" 4. I have heard learned counsel for the appellant/plaintiff and I have perused the records of both the Courts below as also the impugned judgment passed by the Court below. 5. The undisputed facts in the present matter are that the appellant/plaintiff and the respondents/defendants are real brothers and the property in question is ancestral property. Cause of action as given in the plaint arose to the appellant/plaintiff when he started construction over his share of the plot and the respondents/defendants objected to it in the month of December 1996, whereupon the above suit for declaration that the suit property is ancestral property and he be declared entitled for 1/4th share and separate possession, has been filed.	

मामला क्रमांक S.A. 311..... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	6. The respondent/defendants denied the averments of the plaint and stated that the property in question was divided amongst the share holders during the life time of their father Budhu, at that time it was divided into five shares and subsequently, after the death of Budhu, the property was again divided into four shares in the year 1971 with the help of Halka Patwari and since then they are peacefully in possession of their respective shares. In the year 1994 a joint application was preferred before the Settlement Commissioner for recording their names with respect to their respective shares as till then revenue papers were not corrected. In the said proceedings all the four brothers were present and the Settlement Officer with their consent prepared partition memo and accordingly, the revenue papers were reconstructed and the appellant/plaintiff has suppressed this fact in his plaint. 7. On the basis of pleadings of the respective parties issues were framed by the trial Court and the suit was dismissed by recording a finding interalia that the plaintiff is not entitled for 1/4th share over the property described in schedule "A", he is not entitled to recover the possession after effecting partition over the 1/4th share of the suit property and the property in question is ancestral property and the same has been	

K-10/10

मामला क्रमांक ...S.A...311..... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	partitioned between the plaintiff and defendants No. 1 to 3 during the lifetime of their father. 8. The appeal preferred by the appellant/plaintiff was also dismissed with identical finding. 9. Both the Courts below after considering the evidence available on record have recorded a concurrent finding of fact that the suit property was partitioned between the parties with their consent by the revenue Courts and even prior to that partition there was a partition into five equal shares between the parties with their consent during the lifetime of their father Budhu and after his death the property was again partitioned into four equal shares. The above finding is based on the pleadings of the respective parties as also on the admission of the plaintiff himself in his Court statement which does not call for any interference. No substantial question of law as proposed by the appellant arises for adjudication of this appeal. 10. In the result, the appeal being devoid of substance is liable to be dismissed at the admission stage itself and it is accordingly dismissed.	Sd/- Dhirendra Mishra Judge

Khan
10.06